



Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS-SC-21-0054]

Marketing Order for Oranges, Grapefruit, Tangerines, and Pummelos Grown in Florida

AGENCY: Agricultural Marketing Service, (USDA).

ACTION: Final rule.

SUMMARY: This rulemaking amends Marketing Order 905, which regulates the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida. The amendments reduce the size of the Citrus Administrative Committee (Committee), lower the quorum requirements, revise the nomination and selection processes, and remove the requirement to allocate committee seats based on volume from each district. A new section will provide the Committee authority to receive voluntary contributions for promotion and research projects. Also, conforming changes were made to help align the marketing order with the amendments.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Geronimo.Quinones@usda.gov or Matthew.Pavone@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program,

AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237;

Telephone: (202) 720-8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, finalizes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida. Part 905, referred to as the “Order,” is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is composed of citrus producers and shippers operating within the area of production, and a non-industry member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

In addition, this rule has been reviewed under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has

determined this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rule has also been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering oranges, grapefruit, tangerines, and pummelos grown in Florida.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 8c(17) of the Act and the supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. In determining whether informal rulemaking is appropriate, AMS is required to consider the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendments in this final rule are not unduly complex. The amendments are primarily administrative in

nature and adapt the Committee's rules of practice to better reflect the current state of the Florida citrus industry. In addition, as discussed in the **Final Regulatory Flexibility Analysis** section below, the amendments are not expected to impose any costs on affected entities.

The Committee unanimously recommended the amendments following deliberations at a public meeting held on November 19, 2020. This rule will amend the Order by reducing the size of the Committee and lowering quorum requirements, revising the nomination and selection processes, eliminating the requirement to allocate Committee seats based on volume from each district, and adding a new section to provide the Committee authority to receive voluntary contributions for promotion/research projects. Finally, outdated language in the Order was revised and other conforming changes were made to align the Order with the amendments.

A proposed rule soliciting comments on the amendments was published in the **Federal Register** on June 30, 2022 (87 FR 39003). Seven comments were received in response to the proposed rule, all of which were in support of the proposal. After reviewing the comments, AMS republished the proposed rule without change along with the referendum order in the **Federal Register** on January 18, 2023 (88 FR 2862). That document directed that a referendum among Florida citrus producers be conducted from April 3, 2023, through May 1, 2023, to determine whether they favor the proposals. To become effective, the amendments had to be approved by either two-thirds of the producers voting in the referendum or by those representing at least two-thirds of the volume of citrus grown by those voting in the referendum.

The results of the referendum show that all four amendments were favored by over 97 percent of the eligible producers who voted and over 99 percent of the volume voted favored all the amendments.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this final rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened.

There are approximately 14 handlers of Florida citrus who are subject to regulation under the Order and approximately 500 citrus producers in the regulated area. At the time the initial regulatory flexibility analysis was prepared (88 FR 2862), small agricultural service firms were defined by the Small Business Administration (SBA) as those having annual receipts of no more than \$30,000,000, small agricultural producers of orange groves were defined as those having annual receipts of no more than \$3,500,000, and small agricultural producers of citrus (except orange) groves were defined as those having annual receipts of no more than \$3,750,000 (13 CFR 121.201). The SBA subsequently updated these standards and, at the time this final regulatory flexibility analysis was prepared, the SBA defined small businesses as those having annual receipts of no more than \$4,000,000 for orange producers, \$4,250,000 for other citrus producers, and \$34,000,000 for handlers (13 CFR 121.201). Thus, AMS changed the thresholds to reflect the new SBA thresholds in this final rule. The changes do not impact AMS's ultimate determination regarding the impact of the rule on small entities.

According to data from the National Agricultural Statistics Service (NASS), the weighted average packing house door equivalent price for fresh Florida oranges for the 2022–23 season was approximately \$21.07 per box with total shipments of around 1,612,000 boxes. Based on this information, the majority of orange handlers have average annual receipts of significantly less than \$34,000,000 (\$21.07 multiplied by

1,612,000 boxes equals \$33,964,840, divided by 14 handlers equals \$2,426,060 per handler). The weighted average packing house door price for other Florida citrus for the 2022-23 season was \$38.24 per box with total shipments of 1,402,000 boxes. Based on this information, the majority of other citrus handlers have average annual receipts of significantly less than \$34,000,000 (\$38.24 multiplied by 1,402,000 boxes equals \$53,612,000, divided by 14 handlers equals \$3,829,428.57 per handler).

In addition, based on the NASS data, the weighted average orange grower price for the 2022-23 season was estimated at \$18.90 per box of fresh oranges. Based on grower price, shipment data, and the total number of Florida orange growers, the average annual grower revenue for oranges is well below \$4,000,000 (\$18.90 multiplied by 1,612,000 boxes equals \$30,465,823.03, divided by 500 growers equals \$60,931.65 per grower). The weighted average other citrus grower price for the 2022-23 season was estimated at \$29.08 per box of fresh citrus. Based on grower price, shipment data, and the total number of Florida citrus growers, the average annual grower revenue for other citrus is well below \$4,250,000 (\$29.08 multiplied by 1,402,000 boxes equals \$40,775,768, divided by 500 growers equals \$81,551.54 per grower). Thus, the majority of Florida citrus handlers and growers may be classified as small entities.

AMS has determined that the amendments, as effectuated by this final rule, will not have a significant impact on a substantial number of small businesses. Rather, large and small entities alike would be expected to benefit from the Committee's improved ability to address important issues of interest to all on a timely basis. No small businesses are unduly or disproportionately burdened.

The amendments to the Order are necessary because the Florida citrus industry has undergone consolidation and crop reduction. Decreasing the Committee's size makes it more reflective of today's industry and easier to fulfill the quorum requirement. Handlers routinely source fruit from across the state, therefore the differentiation of

districts no longer serves a practical purpose. Adding an authority to accept voluntary contributions from domestic sources allows the Committee to collaborate with other organizations for research/promotional activities. No economic impact is expected from these amendments because they will not establish any new regulatory requirements on handlers, nor will they have any assessment or funding implications. There will be no change in financial costs, reporting, or recordkeeping requirements because of these amendments.

Alternatives to this action were considered by the Committee. However, due to changes in the industry, AMS believes the amendments are justified and necessary to ensure the Committee's ability to locally administer the program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule does not impose additional reporting or recordkeeping requirements on either small or large Florida citrus handlers or producers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies. AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Like all Committee meetings, the November 19, 2020, Committee meeting was widely publicized throughout the production area. Meetings are held virtually or in a hybrid style. Participants both large and small have a choice whether to attend in person or virtually and can participate in the Committee's deliberations on all issues.

A proposed rule concerning this action was published in the **Federal Register** on June 30, 2022 (87 FR 39003). A copy of the rule was sent via email to the Committee Manager for disposal to all Committee members and the Florida citrus industry. The proposed rule was made available by USDA through the Internet and the Office of the **Federal Register**. A 60-day comment period ending August 29, 2022, was provided to allow interested persons to respond to the proposals. Seven comments were received during the comment period, all of which were in support of the proposed amendments. Based on all the information available to AMS at this time, including the comments received in response to the proposed rule, no substantive changes will be made to the amendments as proposed.

A proposed rule and referendum order was then published on January 18, 2023 (88 FR 2862). That document directed that a referendum among Florida citrus producers be conducted during the period of April 3, 2023, through May 1, 2023, to determine whether they favored the proposed amendments to the Order. To become effective, the amendments had to be approved by two-thirds of the producers voting in the referendum or by those representing at least two-thirds of the volume of citrus grown by those voting in the referendum. The results show that over 97 percent of the eligible producers who voted and over 99 percent of the volume voted favored all four amendments. All of the amendments were passed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be

sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Order Amending the Order Regulating the Handling of Oranges, Grapefruit, Tangerines, and Pummelos Grown in Florida

Findings and Determinations¹

(a) Findings and Determinations Upon the Basis of the Rulemaking Record

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 905; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 905, as amended, and as hereby further amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

2. Marketing Order 905, as amended, and as hereby further amended, regulates the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 905, as amended, and as hereby further amended, is limited in application to the smallest regional production area, which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 905, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

area as are necessary to give due recognition to the differences in the production and marketing of citrus produced or packed in the production area; and

5. All handling of citrus produced or packed in the production area, as defined in Marketing Order 905, is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

(b) Determinations.

It is hereby determined that:

1. The issuance of this amendatory Order, amending the aforesaid Order, is favored or approved by producers representing at least two-thirds of the volume of citrus produced by those voting in a referendum on the question of approval and who, during the period of August 1, 2021, through July 31, 2022, were engaged within the production area in the production of such citrus.

2. The issuance of this amendatory Order advances the interests of producers of citrus in the production area pursuant to the declared policy of the Act.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of oranges, grapefruit, tangerines, and pummelos grown in Florida shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby to be amended as follows:

The provisions amending the Order contained in the proposed rule and referendum order, published in the **Federal Register** (88 FR 2862) on January 18, 2023, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Pummelos, Reporting and recordkeeping requirements, Tangerines.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 905 is as follows:

**PART 905 – ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS
GROWN IN FLORIDA.**

1. The authority citation for part 905 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 905.14, revise paragraph (a) introductory text to read as follows:

§ 905.14 Redistricting.

(a) The Committee may, with the approval of the Secretary, redefine the districts into which the production area is divided or reapportion or otherwise change the grower membership of districts, or both: *Provided*, That the membership shall consist of 10 grower members, and any such change shall be based, insofar as practicable, upon the respective averages for the immediately preceding three fiscal periods of:

* * * * *

3. In § 905.19, revise paragraph (a) to read as follows:

§ 905.19 Establishment and membership.

(a) There is hereby established a Citrus Administrative Committee consisting of 10 grower members. Grower members shall be producers who produce within the district for which they are nominated and selected to represent. Grower members may be persons who, in addition to being producers, are shippers or employees of shippers: *Provided*, that the committee, with the approval of the Secretary, may establish alternative qualifications for such grower members. The committee may be increased by one non-industry member nominated by the committee and selected by the Secretary. The committee, with approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the non-industry member.

* * * * *

4. Revise § 905.22 to read as follows:

§ 905.22 Nominations.

(a)(1) The Committee shall give public notice of a meeting of producers in each district, to be held not later than April 10th of even-numbered years, for the purpose of making nominations for grower members and alternate grower members. The Committee, with the approval of the Secretary, shall prescribe uniform rules to govern such meetings and the balloting thereat. The chairman of each meeting shall publicly announce at such meeting the names of the persons nominated, and the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes so cast, the names of the persons nominated, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of April.

(2) Each nominee shall be a producer in the district from which he or she is nominated. In voting for nominees, each producer shall be entitled to cast one vote for each nominee in each of the districts in which he or she is a producer. At least one of the nominees and their alternates so nominated shall be affiliated with a bona fide cooperative marketing organization.

(b) Notwithstanding the provisions of paragraph (a) of this section, nomination and election of members and alternate members to the Committee may be conducted by mail, electronic mail, or other means according to rules and regulations recommended by the Committee and approved by the Secretary.

5. Revise § 905.23 to read as follows:

§ 905.23 Selection.

From the nominations made pursuant to § 905.22(a) or from other qualified persons, the Secretary shall select 10 members and 10 alternates. At least one such

member and their alternate shall be affiliated with a bona fide cooperative marketing organization.

6. In § 905.29, revise paragraph (b) to read as follows:

§ 905.29 Inability of members to serve.

* * * * *

(b) If both a member and his or her respective alternate are unable to attend a committee meeting, such member may designate another alternate to act in his or her place in order to obtain a quorum. If the member is unable to designate such an alternate, the committee members present may designate such alternate.

* * * * *

7. In § 905.34, revise paragraphs (a), (b), and (c) to read as follows:

§ 905.34 Procedure of committees.

(a) Seven members of the committee shall constitute a quorum.

(b) For any decision or recommendation of the Committee to be valid, six concurring votes shall be necessary: *Provided*, That the Committee may recommend a regulation restricting the shipment of grapefruit grown in Regulation Area I or Regulation Area II which meets the requirements of the Improved No. 2 grade or the Improved No. 2 Bright grade only upon the affirmative vote of a majority of its members present from the regulation area in which such restriction would apply; and whenever a meeting to consider a recommendation for release of such grade is requested by a majority of the members from the affected area, the committee shall hold a meeting within a reasonable length of time for the purpose of considering such a recommendation. If after such consideration the requesting area majority present continues to favor such release for their area, the request shall be considered a valid recommendation and transmitted to the Secretary. The votes of each member cast for or against any recommendation made

pursuant to this subpart shall be duly recorded. Whenever an assembled meeting is held each member must vote in person.

(c) The committee may provide for meeting by telephone, or other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing: Provided, that if any assembled meeting is held, all votes shall be cast in person.

* * * * *

8. Add § 905.43 before the undesignated center heading “Regulations” to read as follows:

§ 905.43 Contributions.

The Committee may accept voluntary contributions. Such contributions shall be free from any encumbrances by the donor and the Committee shall retain complete control of their use.

9. Revise § 905.80 to read as follows:

§ 905.80 Fruit not subject to regulation.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 905.52 and 905.53 and the regulations issued thereunder, ship any variety for the following purposes:

- (1) To a charitable institution for consumption by such institution;
- (2) To a relief agency for distribution by such agency;
- (3) To a commercial processor for conversion by such processor into canned or frozen products or into a beverage base;
- (4) By U.S. Mail or private courier; or
- (5) In such minimum quantities, types of shipments, or for such purposes as the committee with the approval of the Secretary may specify.

(b) No assessment shall be levied on fruit so shipped. The committee shall, with the approval of the Secretary, prescribe such rules, regulations, or safeguards as it may

deem necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications with the committee for authorization to handle a variety pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the variety will not be used for any purpose not authorized by this section.

10. Revise § 905.114 to read as follows:

§ 905.114 Redistricting of citrus districts and reapportionment of grower members.

Pursuant to § 905.14, the citrus districts and membership allotted each district shall be as follows:

(a) Citrus District One shall include that portion of the State of Florida, which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico. This district shall have 10 members and 10 alternates.

(b) [Reserved]

11. In § 905.120, revise paragraphs (d) and (e) and remove paragraphs (f) and (g).

The revisions read as follows:

§ 905.120 Nomination procedure.

* * * * *

(d) At each meeting each eligible person may cast one vote for each of the persons to be nominated to represent the district or group, as the case may be.

(e) Voting may be by written ballot. If written ballots are used, all ballots shall be delivered by the chairman or the secretary of the meeting to the agent of the Secretary. If written ballots are not used, the committee's representative shall deliver to the Secretary's agent a listing of each person nominated and a count of the number of votes cast for each nominee for grower member and alternate. Said representative shall also provide the

agent the register of eligible voters present at each meeting, a listing of each person nominated, and the number of votes cast.

12. In § 905.150, revise paragraph (d) to read as follows:

§ 905.150 Eligibility requirements for public member and alternate member.

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(d) The public member should be nominated by the Citrus Administrative Committee and should serve a 2-year term which coincides with the term of office of grower members of the Committee.

Erin Morris,

*Associate Administrator,
Agricultural Marketing Service.*

[FR Doc. 2023-28315 Filed: 12/26/2023 8:45 am; Publication Date: 12/27/2023]